PD-0157-20
COURT OF CRIMINAL APPEALS
AUSTIN, TEXAS
Transmitted 4/7/2022 2:55 PM
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IN THE
TEXAS COURT OF CRIMINAL APPEALS

ROBEERT ERIC WADE, III,
APPELLANT,

v.

THE STATE OF TEXAS,
APPELLEE.

ON PDR FROM THE THIRD
COURT OF APPEALS

AMICUS CURIAE BRIEF BY DISTRICT ATTORNEY FOR THE 105TH JUDICIAL DISTRICT OF TEXAS IN SUPPORT OF RECONSIDERATION OF OPINION

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STATEMENT OF COMPLIANCE WITH TEX. R. APP. P. 11

The present amicus curiae brief is filed by the District Attorney's Office for the 105th Judicial District of Texas, in accordance with the requirements of Texas Rule of Appellate Procedure 11. No fee has been paid or will be paid for the preparation of this brief. The certificate of service attached to the back page of this brief certifies that copies have been mailed to all parties.

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	§	
V.	§	COURT OF CRIMINAL APPEALS
	§	
THE STATE OF TEXAS,	§	
Appellee.	§	OF TEXAS

AMICUS CURIEA'S BRIEF IN SUPPORT OF RECONSIDERATION OF OPINION

TO THE HONORABLE COURT OF CRIMINAL APPEALS:

ARGUMENT

There is a serious disconnect in the present opinion of the Court concerning the time frame for judging serious permanent disfigurement. The only time the defendant had the opportunity to observe the injury in a manner that would have given him a superior perspective to that of the jury was at the time it was inflicted. Yet, that is not the relevant point in time for evaluating a "permanent" serious disfigurement. The jury, just as well as the defendant, could observe and evaluate the seriousness of the victim's disfigurement as it had been permanently manifested at the time of trial. Accordingly, defendant's lay opinion runs afoul of the "helpfulness" prong of Texas Rule of Evidence 701 and amounts to nothing more than the defendant substituting his own opinion for that of the jury on a matter all are

equally able to observe. *See Fairow v. State*, 943 S.W.2d 895, 900 (Tex. Crim. App. 1997) (citing *Cooper v. State*, 23 Tex. 331, 342-343 (1859) (holding that no opinion is needed "for what any fool can plainly see")).

This being the case, the defendant's lay opinion should not be given any relevance or weight in determining whether some affirmative evidence justified simple assault as a rational alternative to aggravated assault in the present case.

CONCLUSION

The District Attorney's Office for the 105th Judicial District of Texas submits the foregoing Amicus Curiae Brief for the Court's consideration in the present case.

Respectfully submitted,

/s/ *Douglas K. Norman*

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RULE 9.4 (i) CERTIFICATION

In compliance with Texas Rule of Appellate Procedure 9.4(i)(3), I certify that the number of words in this brief, excluding those matters listed in Rule 9.4(i)(1), is 246.

/s/ *Douglas K. Norman*

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Douglas K. Norman

CERTIFICATE OF SERVICE

This is to certify that copies of this brief were e-served on April 7, 2022, on the attorney for Mr. Robert Eric Wade, III, Mr. Richard E. Wetzel, at wetzel_law@1411west.com, the attorney for the State, Mr. Rene Gonzalez, at rene.gonzalez@wilco.org, and the State Prosecuting Attorney, at Stacey.Soule@SPA.texas.gov.

/s/ *Douglas K. Norman*

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Douglas K. Norman

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